

IN RE: THE PROPOSED ERGONOMICS RULE

State of Washington
Department of Labor and Industries

Public Hearing
Red Lion Motel at the Quay
Centennial Center
100 Columbia Street
Vancouver, Washington
1:30 p.m., Tuesday
January 11, 2000

HEARING MODERATORS:

SELWYN WALTERS, Agency Rules Coordinator

GAIL HUGHES, Senior Program Manager

REPORTED BY: Dee Casey, RPR, CSR

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P R O C E E D I N G S

MR. WALTERS: Good afternoon. I now call this hearing to order. This is a public hearing being sponsored by the Department of Labor and Industries.

I am Selwyn Walters, Agency Rules Coordinator, and with me is Gail Hughes, who is a senior official with the Industrial Assurance Division of the agency, and we are the hearing officers today. And we are representing Gary Moore, who is Director of L & I.

For the record, this hearing is being held on January 11 in Vancouver, Washington, and the time now is 1:43 p.m. This hearing is authorized by the Washington Industrial Safety and Health Act as well as by the Administrative Procedure Act.

Once the formal hearing is closed, staff will be available for additional comments. If you have not already done so, please sign the sign-in sheet at the back of the room. It's important that you do so because we'll use that to call you forward, and we are required by the Administrative Procedure Act to inform you about today's hearing results. So that's how we will inform you about today's hearing results.

For those of you who have written comments that you would like to submit, please give them to the staff at the back. Raise your hands back there. We have Jen and Jeff as well as Josh Swanson and Sheryl Moore.

We will accept written comments until 5:00 p.m. on February 14th, 2000. You should mail your written comments to WISHA Services Division at Post Office Box 44620, Olympia, Washington 98504-4620. Or you may e-mail your comments to ergorule@lni.wa.gov. Ergorule, that's one word. E-r-g-o-r-u-l-e @lni.wa.gov, or you can fax your comments to 360.902.5529. I would like to remind you that faxed comments should be no more than ten pages.

The court reporter for this hearing is Dee Casey of Rider & Associates. Transcripts of today's proceedings should be requested directly from Rider & Associates. Also, copies of the transcript will be available on the WISHA home page, and the address for that home page is not yet running, but will be available in about three weeks. That is www.lni.wa.gov/wisha/ergo. Any requests for transcripts that are sent to the Department will be forwarded to Rider & Associates. And it's important

to know that the court reporter does charge for the transcript.

Notice of today's hearing was published in the Washington State Register on December 1st and December 15th, 1999, and hearing notices were also sent to interested parties. In accordance with the Industrial Safety and Health Act, notice was also published 30 or more days prior to this hearing in the following newspapers: The Journal of Commerce, the Spokesman Review, the Olympian, the Bellingham Herald, the Columbian, the Yakima Herald-Republic, the Tacoma News Tribune.

This hearing is being held to receive written as well as oral testimony on the proposed rule. Any comments received today, as well as comments received in writing, will be presented to the Director.

Please refer to the handout provided to you at the door for a copy of the proposed rule. Copies of this handout are also located at the sign-in table at the back.

In order to evaluate the potential economic impact of the proposed rule in small business, the Department completed a Small Business Economic Impact Statement in accordance with the Regulatory

Fairness Act.

For those of you who have already given testimony at previous hearings, you will be called upon only after all new testimony has been given, provided time permits. As you can see, there are several people here today to testify, so please limit your oral explanations to about ten minutes -- but you don't have to use the entire ten minutes.

If time permits, we will allow for additional testimony to be given after everyone has had the opportunity to speak.

Please keep in mind that we have allowed for the full month to receive written comments. The cutoff date being February 14, 2000.

The rules on how the hearing will be conducted, I would like to remind you that this is not an adversarial hearing. There will be no cross-examination of speakers; however, Gail and I may ask questions to clarify your -- your testimony. As stated above, when all speakers on the hearing roster have had the opportunity to present their testimony, we will provide an opportunity for everyone who so desires to present additional testimony. Gail and I may ask questions of those who provide testimony for the purpose of

clarification.

In fairness to all parties, I ask your cooperation by not applauding or verbally expressing your reaction to testimony being presented. If we observe those few rules, everyone will have the opportunity to present their testimony and help the Director to consider all viewpoints when making a final decision.

We will call you to testify in panels of three. And so, Steve Hecker and -- in panels of two. I'm sorry. -- and John Ascham, forgive me for bungling your name, but when you come up, please restate your name, spelling, of course, your first and last name for the court reporter.

At this time, we would like to take oral testimony. Please identify yourselves and spell your name and identify who you represent for the record.

Mr. Hecker.

MR. HECKER: Thank you.

My name is Steve Hecker. That is H-e-c-k-e-r. I'm with the University of Oregon, and I'm here for affiliation purposes only. I apologize that your first witness is a carpetbagger from across the river. I did not intend to be first.

But the ergonomic experience I have is with employers and unions on both sides of the border. I -- Occupational Safety and Health Research and an instructor for the University of Oregon.

THE REPORTER: You need to slow down.

MR. HECKER: In the last five to six years, most of my work has been devoted to ergonomics. Ergonomics in a variety of industries and sectors. In 1995, '96, and '97, with funding from the Oregon Occupational Safety and Health Division, I worked with union and management --

THE REPORTER: Please, slow down.

MR. HECKER: -- manufacturing union will be testifying specifically about the program.

I will submit copies of the manuals and curriculum developed from that program as part of the record as an example of the proposed ergonomics program in private industry sectors.

Since 1995, I have directed a project funded by the National Institute for Occupational Safety and Health in construction ergonomics, and we have used, as research sites, a number of construction sites in the Greater Portland area on both sides of the border and developed a strong working relationship with a number of general and --

contractors in the industry and union as well.

I wanted to make a few comments -- general comments about the proposed regulations today, but will focus most of my attention on the construction industry, and I did this because of my own experience because ergonomics is less researched and less developed in that industry than in others and because I think there are some different ways ergonomics needs to be addressed in construction.

And I need to make the disclaimer, I am speaking from my own experience, not necessarily the views of either my employer or the contractor unions that I work with.

First, I want to praise the State of Washington on several accounts for proposing this rule. I believe it is the time to raise ergonomics to the regulatory level. We don't have specific numbers in some areas, but we certainly have enough specifics to know the relationship of ergonomics to musculoskeletal disorders and about some of those mechanisms for reducing those risk factors -- enough information to act.

I also support the caution zone approach that the proposed regulation takes. It's a preventative approach that targets ergonomic risks

in determining which jobs require attention rather than waiting for injuries to occur. I believe that is an improvement both on the California ergonomic standards and the Federal standards.

I do have some concerns that, by not stressing medical management at all, the proposal may miss an opportunity to promote early reporting and recognition of symptoms which can help in identifying problem jobs, and I hope that L & I will be using other avenues to ensure fair and prompt reporting for workers with these injuries.

The requirement for employee participation is another positive aspect of the proposal. If there is one thing I have learned in doing ergonomic programs in industry is that the input of the person doing the job, using the tool, and having to spend his or her workday at that work station is critical to success.

Finally, I want to support the application of the ergonomics rule to all industries. There are many rationalizations in the federal proposal for excepting construction, agricultural, and maritime, but ultimately, workers in these industries deserve the same protection as others.

That said, I want to direct my comments to

ergonomic issues in construction, both in general and as they relate to the proposed rule. There is little question that many construction workers face ergonomic risk factors resulting in musculoskeletal disorders at higher levels than most occupations.

I have a paper that I will be submitting with my testimony with some of that supporting data, and L & I certainly already has much of it as well.

The ergonomic hazards of construction resemble those in manufacturing industries in some ways but differ in other important ways. Some construction work involves high force, high repetition, and awkward posture. For example, dry wall installation, framing, some kinds of concrete form work.

In other cases, construction tasks resemble factory work, such as when production work stations are set up at construction sites; however, construction jobs often involve more varied activity and longer cycle times than do manufacturing jobs.

I'm concerned that the proposed regulation doesn't explicitly address the fact that different tasks involve different risks in construction, though Section 01 -- 05105 does refer to employee's typical work. Perhaps, we need to be specific in

mentioning that in this section and in 5130 of the distinctions in the jobs, and tasks, and some --

THE REPORTER: Please, slow down.

MR. HECKER: -- how the rule applies to construction jobs that may differ widely from day to day or site to site. It may, in fact, be worth exploring a section specific to construction and construction-like jobs.

For instance, maintenance positions, and pulp and paper, sawmills may be similar situations and specific tasks vary --

THE REPORTER: Excuse me. Slow down.

MR. HECKER: It is our experience that some ergonomic risks cut across most or all industries, while others are more trade specific. Housekeeping and storage of materials are common factors in creating ergonomic risks. The regulation should also address additional risk factors in construction.

Others, extreme environment areas, cold and wet conditions. Since such conditions exacerbate other ergonomic risk factors, we should be --

I would like to mention certain characteristics of the construction industry that create greater obstacles to ergonomic improvement

such as constantly changing environment, mobile work force, and short-duration jobs, multiple-employer work sites, the location of construction at the floor or ceiling level, and workers over-applying their own hands tools.

We are not arguing against application of the regulation to construction. On the contrary, I believe a properly designed regulation should aid in bringing about much ergonomic change in construction. They do, however, point to the need for particular approaches in the industry because of the mobile work force.

Other implications, how the education is done was mentioned in -- in the questions. I think appropriate journeyman upgrade training is a very good approach in this industry. We have long-known that multi-employee work sites create -- at multi-employer work sites, contractors create hazards for each other, and that's true in ergonomics, communications, management systems. And general contractor and owner involvement can help to control such problems.

Have I reached my limit yet?

MR. WALTERS: You have about one minute.

MR. HECKER: Okay. Thank you.

Some construction tasks, like working on the ground or overhead, are going to be more difficult to control in construction, but our research has demonstrated that a lot of work that is done on the ground, for instance, is done because that is where you find it. Not necessarily because that's where it has to be. We have seen success in raising the equipment onto a work table to improve work posture and reduce -- similarly, setting up the work bench at waist height to prefab things that would otherwise have to be built in place, can relieve awkward and static postures.

In the written testimony, I am submitting a tentative model that we've developed through our research. They indicate the kinds of ergonomic changes that have been made in construction from field fixes that workers do themselves to more evolutionary kinds of changes that require cooperation at many levels of the industry.

I want to close by extending the discussion to the standard as a whole again. If and when the standard is promulgated, it's a whole new era, I think, for L & I, as well as Federal, as well as other agencies. When the Federal rule goes through,

it's a different type of regulation that will require different approaches to enforcement. It blurs the line between enforcement and consultation in a way I think that is new, and I think L & I is on the right track on this score.

I think an industry-wide approach is the best practice providing resources to the employers so that, when they say, I don't know where to start, you can show them where to start. And I think, also, the solution to this problem of how to enforce a regulation like this is going to require sensitive participation by all parties, experimentation and a great deal of training for company personnel. But I think history has shown that voluntary approaches are -- alone are not the answer to this.

MR. WALTERS: Thank you. Do you have your papers with you?

MR. HECKER: I do.

MR. WALTERS: Could you give them to me?

MR. HECKER: I have already.

Mr. Ascham.

MR. ASCHAM: Good afternoon. My name is John Ascham, and I'm a member of the United Brotherhood of Carpenters, Local 1715.

The last name is A-s-c-h-a-m, and John with an "H". Thank you.

I would like to support the adoption of the proposed rule. I make my living as a contractor, and I am placed in risk of injury many times and have occasionally received temporary injuries that have prevented me from working.

The workplace in America is a place where we spend more time than our parents did. We -- we often spend more time there than we do with our families, and it ought to be a place we are assured that it is a safe place.

Business has already proven that their heart may be in the right place but that self-imposed standards are not filling the bill. We need the proposed rule, and I support it.

Our society is made of people who work in order to live and not live in order to work.

The Federal ergonomic standards proposal is -- well, are being stonewalled, and I believe we need this rule proposed by the State agency. I do believe that construction contractors could negotiate for and expect to hire a trained worker from the State-accredited apprenticeship program, and I would like to see that.

And other than that, I would like to thank everyone, and to tell you I'm sorry I was not as prepared as Mr. Hecker. That's the essence of my comments.

MR. WALTERS: Thank you for coming in.

Just a slight change. We'll call a panel of three instead of two. Harold Abbe, Gene Hain, and Clell -- Clellie Dobbe.

And then, Patty Huggins and Elmer -- --
Elmer should prepare to come up.

MR. ABBE: Good afternoon. I'm Harold Abbe, A-b-b-e, and I'm here representing the Association of Washington Pulp and Paper Workers. My purpose here today is to show what can happen to workers, and give a dramatic example, when there are no rules or awareness of the needs for rules in the area of ergonomics.

We will talk about an incident where we have three factors involved in an employee getting injured: an older than normal work force, a work force who had been engaged in less than physical activity in a laboratory environment, and a work force who was laid off and then returned to an area that they have left previously, a paper mill.

I have brought with me a worker who was

involved in that, and I will let him give his testimony as to what happened in that kind of environment.

MR. DOBBE: Good afternoon. My name is Clellie Dobbe, D-o-b-b-e.

THE REPORTER: Spell your first name, please.

MR. DOBBE: C-l-e-l-l-i-e.

MR. DOBBE: And that's Irish. I could get angry.

I'm a retired employee from Fort James, James River Crown Zellerbach. Prior to 1985, I worked for Crown Zellerbach in a research facility.

Approximately 1985, Sir James Goldsmith decided to raid Crown Zellerbach and did so. Crown Zellerbach, in their haste to capitulate to Sir James Goldsmith, closed down their research facility.

I had been there approximately twenty years. There were folks that had been there much longer than I. We were returned to the main paper mill at that time.

Shortly after that, of course, it became James River. They were our white knight that came and rescued us from Sir James Goldsmith.

But during that time, we employees had a guarantee of a job, not necessarily a job that reflected our seniority, or our ability, or things of that nature. Those jobs meant starting at the bottom again as if you were eighteen or nineteen years old. It meant getting into these jobs that were very -- had very repetitive situations.

I, myself, ended up in a converting plant. Now, I had been to that converting plant many, many times, and I knew what the work was. It had been done mostly by ladies, and you know, I had noticed a lot of these ladies with hand wraps, wrist wraps, and forearm wraps over the years and really hadn't paid much attention to it. I felt, you know -- and, of course, I had heard a few of them, in a union meeting, complaining about, you know, pain in their hands and so on, but it had never happened to me, so it wasn't all that important, at that point in time, to me.

When I became an employee at the converting plant, my main purpose was to stuff product into a big box as fast as I could for eight hours a day. Within -- within a short period of time, I noticed that my hands began to swell, and I couldn't sleep very well at night in a prone position in a bed as

most of us do. I started sleeping sitting up a lot so that I could have circulation in my hands. I reported this to the mill nurse, and she started wrapping my hands, and my wrists, and my forearms like the ladies that I saw years before and that was going to help, that was going to take care of the problem.

Well, frankly, as you all know, that doesn't take care of the problem. As time went by, it got worse, and finally, it got to the point I couldn't simply -- I couldn't button my shirt. I couldn't do anything. My fingers were swollen to the size of a sausage. I couldn't clinch my hands in a fist. I couldn't even flex my fingers. Frankly, I couldn't pick up a fork to feed myself. I had to stop work because of tendonitis.

My employer thought that I should have taken better care of myself. I got very little sympathy from anyone but the nurse and the other employees who had went through the same situation. Because, you see, the employer didn't have to fix anything. There was no rules that said: You have to fix that.

Well, during this period of time when I became unemployed, I went on State Industrial, or I guess -- I guess Crown Zellerbach was self-insured,

whichever it was. I started drawing this -- this small amount of money.

Doctor Peter Goodwin, who was the company so-called doctor, who I knew quite well, called me at home and he said: Clellie, why don't you just take some time off from work and see if that will take care of it. We will be glad to keep the checks coming for you. Just take the time off from work and see if that might help. Don't rush into an operation. He said: Can you afford to do that? I said: Yeah. I don't have any bills. I'm pretty well set up. I can afford to do that.

So about three months went by, and it got a little better, but Mother Nature did not cure the problem. I, then, contacted another -- the same specialist I had went to in the beginning and went through some testing. And, yes, indeed, I had carpal tunnel syndrome. I was a prime candidate for the operation, both hands.

So, I called Peter Goodwin to let him know I was going to go through with it. He understood, and I said: By the way, Peter, I came upon some news here a few weeks ago talking to one of the fellows in the department who had already had this operation. The company has had automated equipment

sitting in the warehouse for approximately three years for these -- this group of machines that I had been working on. And I talked to one of the supervisors to see why they hadn't been installed, and they said: Well, we can't shut it down. We need the product. So it told me that they really didn't care if I had tendonitis or any other employee had tendonitis. What really mattered to the company was that product.

I went ahead with the operation. The operation was successful. I sleep in a bed now like everybody else does. But my hands are still not what they once were. There is things I can't do yet; however, it has done a pretty good job for me, and if -- if you would ask how do I feel about the companies that choose not to install that automated equipment, I don't feel too good about them. I think they let me down, and they let the people down that had the same problem I did while they had that equipment in the warehouse, knew they could install it, but product came first.

I guess that's kind of the end of my story.
Thank you.

MR. WALTERS: Thank you.

Mr. Hain.

MR. HAIN: My name is Gene Hain. I'm secretary/treasurer of the Association of Western Pulp and Paper Workers.

For the record, I would like the record to show that I have had many years -- over thirty years in the area of industrial safety and health as well as Workers' Compensation. I served on the TriParty Labor Management State Committee in 1969 that came up with the first pulp and paper safety code in the country. I've served on committees of this nature in the four West Coast states on many occasions. I also served on the Workers' Compensation Advisory Committee. It's a statutory committee to assist the Department or to advise the Department in matters of industrial insurance, industrial safety and health.

In the mid-Seventies, one of those tasks was to work with the Attorney General's office in drafting Washington's Industrial Safety and Health Act, and I have also served on the Thirty Member Committee -- one of the two Thirty Member Committees that Michael spoke about earlier on the ergonomic rule. I share that information with you because I want you to know the testimony that I'm about to give all comes from many years of experience.

First, I have to applaud the Department of

Labor and Industries for taking this task on of formulating a rule. It's badly needed.

And as Clellie just testified, there are many companies that recognize that there is a hazard. Some of them are being responsible and taking the appropriate actions; others do not. And there are many employers that, quite frankly, put their head in the sand and don't recognize the fact that -- that there are injuries to workers through repetitive motion in their jobs.

In serving on the Thirty Member Committee, I heard from a lot of different segments of our society -- from small businesses, medium businesses, private individuals, medical providers, and so on, and on.

One of the things that really disturbed me was the testimony and the statements where they were being critical of the Department's data in justifying the cause for this rule. First of all, I would just like to comment that the Department's data from industrial insurance claims is, if anything -- in any way could be inaccurate is because of under-reporting the claims.

I have seen many carpal tunnel claims and/or MSD claims that have been denied by the self-insured

employer or their third-party administrator and left go unchallenged; therefore, there was no claim.

There are also many people who are hurting from MSD that don't want to go through the hassle of filing a Workers' Comp claim and, instead, opt to take their sick leave and have the surgical or the clinical work done under the group medical program. This is just not a few in numbers. This is a considerable number of people.

So the Department's data, if it is flawed, it is flawed because of under-reporting of claims.

As a union representative, I see many, many instances of people who are hurting because of musculoskeletal disorders.

I want to talk to you about a fellow named Al. Al worked in a -- we call them box plants. His job was working as an off-bearer making cardboard boxes. He had to retrieve the boxes from about a waist-high level and stack them on a pallet, starting at about ankle height and gradually increasing in elevation to where it was at shoulder height, or above, and when the pallet was full, a forklift would come by and move it and throw another pallet down, and he'd repeat that process.

This particular work is sometimes seasonal,

and Al was working eight to ten hours a day, six to seven days a week in this repetitive motion.

The doctor testified, in his trial hearing, that his back just simply wore out from all of the repetitive motion. His claim was denied by a self-insured employer, and the case went to the Supreme Court. The Court, in the end, ruled, based on the testimony of his physician, his back simply just wore out, and it was an occupational illness or musculoskeletal disorder. There are many employers that will deny these claims.

In fact, I had one third-party administrator claims manager tell me that it was their policy to deny every MSD claim, realizing that some of those denials would go unchallenged. You know, it's really tragic.

But what we see in this rule is that it's going to require employers to take a look at their workplace and make a good-faith, honest determination as to whether or not they have their caution zone jobs, and if an employer simply swooshs (phonetic) on the evaluation that they make, then, you know, they are subject to citation for noncompliance with the standard, and that's only as it should be.

I have heard some criticisms from people that say that there is no scientific data to support the Department's need for this rule. As an audience, you know, this is representative. I have seen many people that will testify, and we will have some of these -- at the public hearings around the state, as was Clellie here.

We have one employer in the paper industry who denied that there was a problem, and we involved project Sharp End -- and did an on-site survey, and we found out, in the survey, that there was one particular job in a department that everybody that worked on that particular job for more than a year had symptoms of musculoskeletal disorders; where the people that were promoted on above it and the people in the control groups, namely the paper machines and the store room, had no symptoms of MSD. This company, then, began mechanizing the process to reduce the risk factors.

There are many self-insured employers who recognize that MSD is a problem and needs to be corrected just from the state of economics.

The grocery industry is one that I think is very clearly visible. Anybody that goes to the grocery store, just take note of the checkers,

particularly if they have been checkers for more than just a few years. You will see them either wearing wrist braces or you will see scars on their wrists where they have had carpal tunnel escape surgery.

I discussed that with a checker last Sunday -- Saturday, who waited on my wife and I, and I asked her if she had had any problems with any kind of carpal tunnel, or anything like that. And she said: Well, I haven't had any carpal tunnel surgery, but I did have surgery on my shoulder. And she described what some of the problems were that had been caused by reaching and pulling, and she also discussed MSD problems in the neck area and that she had to wear a cervical brace because she had to look down and look up at the monitor to make sure that it was recording properly. She also told me that most of her coworkers, also, had some carpal tunnel symptoms.

In our meeting in Seattle at the SEATAC Airport with the ergonomic committee, I shared this type of a situation, and one of the responses was: Well, you can get carpal tunnel from being pregnant.

Well, my reaction is: You try to tell that to all of the guys and gals who aren't pregnant.

They just don't buy that.

We heard, years ago, from many employers, you know, that it isn't the high noise in the job that causes hearing loss. It's the Sony Walkmans that are played too loud and the rock concerts. Well, nonsense. We all know that workers that are exposed to 95 to 100 decibels exposure for an eight-hour day are going have hearing loss.

Again, I think it appropriate for this rule to be enacted. If I were to say that it had any deficiency, I would like to see it work a little faster and go further. But I clearly respect the Department's ability, with your resources, to implement and phase in a program like this. You need the extra time to do it, to educate your staff, educate the employers, educate the workers in order for this to be a good program. And on behalf of the AWPPW, in particular, and organized labor, in general, I do want to compliment the Department for taking action for this rule.

Thank you.

MR. WALTERS: Patti Huggins and
Elmer --

Pronounce your name, please.

MS. HUGGINS: Yes. Patti Huggins,

H-u-g-g-i-n-s. P-a-t-t-i. I'm pretty nervous, so please excuse me.

My name is Patti Huggins, I'm a member of AWPPW, Local 153, Longview Fiber --

MR. WALTERS: Excuse me. Could you pull the microphone closer?

MS. HUGGINS: Do you need me to start over again?

MR. WALTERS: Yes, if you would.

MS. HUGGINS: I'm Patti Huggins. I'm a member of AWPPW, Local 153, Longview Fiber Company in the storeroom department.

I asked a storeroom coworker if she had ever had a WMSD -- work-related musculoskeletal disorder -- I hoped I said this right -- or ergonomic injury. Her comment was: Which time?

Proceeding on to another person, a mechanic, I asked if he knew anything about ergonomics. His reply: Isn't that what the welders are doing on the south end? Stretching?

A paper machine spare hand carries ten metal blades, taped together, balanced precariously on his shoulder, and they weigh five and a half pounds each. Why carry so many, I asked. It's not too bad, he replies.

While a woman performs her job lifting heavy items and lifting in awkward postures, I ask if she has had an analysis to prevent further injury? No. She recovers and continues to work, increasing the physical risk factor for a permanent disability.

The journeyman mechanic performs a variety of caution zone jobs. Yet how can the demands of his profession not take a toll on him physically? Stretching is a small part of the overall solution. Each day he carries his bag of tools or slings a one-and-a-half ton ratchet block on his shoulder. It hurts a little, but he ignores the symptoms and continues on.

The young man in his early thirties is predestined to have shoulder problems. He may look forward to many surgeries, physical therapy, pain, and missed time from work for the rest of his working life.

In my department, the storeroom, most of my coworkers have had upper- or lower-back injuries. Some have had lost time; some have not. For those who haven't had compensable time loss from a work-related injury, the hazards still exist. We aren't part of the ergonomic statistics. We go to the doctor, and we work every day.

However, rather than become a statistic, we could have a solution to the problem. Only with proper analysis and a cooperative effort between employer and employee shall this occur.

A brief observation brought to my attention items stocked on top shelves. This is from my department. Items stocked on the top shelves, 78 inches from the ground. Heavy metal items stored at least 65 inches, or higher, and several items creating an awkward body position to remove them from their location. I am almost 5 foot 3 inches, and probably shrinking with age.

For example, a heavy -- a heavy bearing packaged in a box 10 inches by 10 inches by 6 3/4 inches deep on a shelf 87 inches high. When the depth of the shelf is only 7 inches, how can one climb a ladder, twist your body to face the item, grasp it properly, and carry it down a rolling ladder?

Secondly, I found a solid steel bushing that weighs approximately 50 pounds on a shelf 57 inches high; a heavy shaft on a rack without any means of removal except by hand.

I feel that the proposed ergonomic rules would be the most effective method for our future

work force. Without the requirement for employers to identify and reduce hazards, we risk damage that is irreparable, thereby, preventing us from continuing to be healthy and productive employees contributing to our society.

Never, after an injury, has a supervisor asked: How can we redesign or get a tool to help you perform your job function?

Often, suggestions are made for newer, updated equipment. Yet, it gets bogged down in the engineering stockpile waiting for feasibility or financial scrutiny.

As it stands now, most companies will not address these types of injuries with ergonomic solutions, rather point the finger and blame the employee -- what a shame -- when the answer can be incorporated specifically in monthly safety meetings.

MR. WALTERS: Thank you. Mr. --

MR. LAULAINEN: My name is Elmer Laulainen, L-a-u-l-a-i-n-e-n. I'm secretary/treasurer of the Clark/Skamania/West Klickitat Central Labor Union, but I share with you that I had spent over thirty years in the pulp and paper industry before I became a dislocated timber worker.

My involvement with the labor union movement began over thirty years ago by stepping forward to serve on a central safety committee. And I would say to you that the purpose of the committee was to make it a safer workplace. But we found one of the most difficult tasks we had was educating our immediate supervisors as to the rules that were actually in place. It was a slow process but, basically, a successful one because, over time, we did make it a better place because of the rules we had.

I view this ergonomic rule as one more piece of the puzzle in order to make this a truly -- a safe work environment. I have found that, unless there is a rule, and it is in place, the companies will not voluntarily do it on their own.

So I think it's very important that these ergonomic rules be done so we have the ability to work through, as a committee, to get that work done.

I would share with you, because I was a mechanic, I, too, had had a soft-tissue injury at one time in my lower back, lost over a week's work because of it, and it's only because of an improper method in the way you lift certain items. I know what the pain is that you go through and the

recovery it takes. But it makes you a better employee because you -- you definitely don't want to go through that pain again if you can prevent it. So the idea is the educational process of doing it.

And I would just encourage you to go forward with your process and adopt the rule.

And I appreciate the opportunity to be able to address you.

MR. WALTERS: Thank you.

Brian Clarke and Mark Pierce.

MR. CLARKE: I'm Brian Clarke, Hoffman Construction.

MR. WALTERS: Would you scoot the microphone up?

MR. CLARKE: I'm Brian Clarke. I'm a safety director with Hoffman Construction Company.

Clarke is C-l-a-r-k-e.

Hoffman Construction Company of Washington is committed to ensuring our job sites create a safe and healthful work environment for the workers, irrespective of the position of the company, to ensure they go home free of injuries.

Excuse me. I have a cold here.

The Department of Labor and Industries has stated, on many occasions, that ergonomic-type

injuries have been in a continual decline over the past several years. We do not believe that there is sufficient data supporting L & I's proposed ergonomic rule at this time; therefore, Hoffman Construction Company of Washington goes on record as opposing this rule as written.

The position paper --

THE REPORTER: Slow down, please.

MR. CLARKE: -- pointed out the flaws in that proposed standard. I would like to highlight four of these items at this time.

Number 1, statistics used to justify the need for the rule appear to include the type of injuries that are exempt from this rule. Examples are outlined in the AGC's position paper.

Number 2, this standard states that employers must reduce injuries and reduce caution zone jobs to the amount feasible. Feasible is a very large and encompassing term that needs a more precise definition.

Number 3, the implementation time frame is not attainable without additional measures for construction. The rule requires work force education within that first 15 months after adoption, hazard analysis at 24 months, and hazard

reduction at 36 months. This requirement is out of sequence. How can one educate -- how can we educate before you analyze the hazard?

Number 4, the best management programs have been proven to work in Europe, but there are many --

THE REPORTER: You have to slow down.

MR. CLARKE: Hoffman recognizes the need to address ergonomic construction standards. We work with the University of Oregon, and NIOSH, and we were the construction company referred in the first testimony.

That research grant and process identified a number of different improvement areas, including flex and stretch, tool redesign, foreman awareness training, and annual refresher training, all of which have been implemented. That program at Hoffman has greatly decreased our on-site ergonomic-related injuries; however we -- the University of Oregon, NIOSH, and Hoffman could not find a fix-all for every situation; thus, we are not in compliance.

I would like to leave on one final question for which I do not expect an answer. The caution zone definition outlined in this standard has repetitive motion identified. My question to the

Department of Labor and Industries is: Will the Seattle Sonics be cited for repetitive motion for dribbling a basketball?

MR. WALTERS: Thank you.

Mr. Pierce.

MR. PIERCE: My name is Mark Pierce, P-i-e-r-c-e.

I wanted to, maybe, correct an earlier statement. When Crown Zellerbach was busted up, it was a leveraged takeover by Sir James Goldsmith, and it was actually busted up and about fifty different segments were created, and as a result, James River wound up taking maybe 20 percent of the piece that was left -- the pulp and paper facility. It was quite a breakup that took place in the early Eighties.

What I have seen, over the last twenty years, in industry has been a movement toward automation, and if you look at the old Crown Zellerbach, Fort James, James River facility at the Camas plant, the population is perhaps half of what it was before the leveraged buy-out. I believe you will see that continuation, especially with rules like these, and I do applaud these rules, that will have a migration towards the iron-collar worker --

increased automation, meaning robotics. There was a drive towards that in the early Seventies. The technology really wasn't there, and the cost to implement was extremely high. It was believed that flexible automation was the answer, when fixed automation was -- probably had a better cost implementation to that.

We are starting to see industry move off shore. We are starting to see it out-sourced to perhaps other countries or other states with more liberal rules or guidelines.

There has been a fair amount of automation. As I have mentioned, our population as being about half of what it was and yet production continues to climb. So it's not that the production is leaving the area. It's simply done by pieces of equipment now instead of people.

The cost to make some of the changes in the ruling will include two-person lifts, so instead of one person doing a job, it will be two people doing the job. That will raise the cost of the end product. Cost of automation will be high. There will be offset costs for the lower cost of the overall cost of wages versus labor. As different pieces of automation or different job changes take

place, since it is a global economy and a global work force, as the opportunity to purchase product from Point A versus Point B and overall costs need to be looked at.

I'm not stating a preference one way or another, but it will be economic reality that will take place in this state and in this industry and, really, across the nation as this is a State and Federal requirement that is coming down. We have automated a fair amount of not only finishing equipment, but the boxes and most of our -- a great deal of our palletized equipment and -- palletized product, excuse me, leaving the facility today has very little human intervention. As the parent rolls are loaded on the machines, a lot of that is done by heavier pieces of equipment, and as it's broken down, and -- on the roll by other pieces of equipment. The operators generally watch a lot of the product simply make itself. A lot of the workers work at this exception now, meaning that when equipment can't keep up, some of the working population attempts to take the place of the automation, and that's not realistic. As we speed the equipment up and have more and more automated equipment, it's less and less possible for an

individual or even multiple individuals to take the place of what that equipment is capable of.

We have seen at least three plant closures in the last two years in our industry, and in my company alone, and I believe we'll see probably three or four more closures as we look at the viability of some of the older facilities that do not have a lot of the automation and are more and more power intensive. You will see large, super mills developed, and you will see more and more of the product go off shore or at least into other countries.

That's my general observation.

MR. WALTERS: Thank you both.

Okay. John Loomis, William Mathews, it looks like, and Gerald Miller.

MR. LOOMIS: I'm John Loomis, J-o-h-n L-o-o-m-i-s. I'm a certified industrial hygienist with PacificCorp. It's spelled P-a-c-i-f-i-c-C-o-r-p. It's one word.

We are an electric utility that operates in the state of Washington. In addition to operating in Washington, PacificCorp is also a multi-state company with operations in Oregon, California, Idaho, Utah and Wyoming. All but one of these

states, Idaho, are operated under a state OSHA plan.

PacificCorp has always been active in establishing a pro-active safety and health program for its employees. We encourage compliance, and we partnership with safety programs which is evident with our safety committees, union, safety --

THE REPORTER: Slow down, please.

MR. LOOMIS: -- each year PacificCorp has been active in addressing ergonomic concerns as they arise within the company. We recognize the need for ergonomic programs, whether it's a company-run program or one sanctioned by government regulations.

In general, we are encouraged by the fact that L & I is interested in establishing an ergonomic rule for better working conditions of employees; however, we are concerned that the proposed rule is redundant with the proposed Federal OSHA ergonomics standard. PacificCorp is already working under the ergonomics standard issued by California. There are already vast differences in the manner in which California regulates ergonomics as compared to the proposed Washington and Federal ergonomic rules. We are concerned that additional state-mandated ergonomic standard, such as the

proposed Washington rule and the Federal rule and other states in which we operate, who may adopt ergonomic rules, would be burdensome and confusing for PacificCorp to comply with.

THE REPORTER: Slow down.

MR. LOOMIS: -- and other safety and health regulations across our company.

In this regard, PacificCorp recommends that L & I withdraw their proposed ergonomic regulations and support the Federal OSHA in the promulgation of the proposed ergonomics standard.

In regard to the proposed ergonomic rule, PacificCorp would like to comment on the following section, Section 05150, which discusses caution zone jobs. Under caution zone jobs, the description in this section discusses the conditions in which a worker would be at risk of developing a work-related musculoskeletal disorder.

PacificCorp would like L & I to explain, one, where did the numbers come from for each of the caution zone jobs defined, and two, what is the definition of workday?

Regarding the numbers -- regarding the numbers of the caution -- of caution zone jobs, PacificCorp would like L & I to justify the

rationale for using the numbers that they have selected for each caution zone job. What study, or studies, or undertaking determined the numbers were valid or not? Was the study or studies valid using an appropriate status model to justify their using that number?

Regarding the definition of workdays, there are many company employees -- workers who spend anywhere from eight to twelve hours a day on job duties. This rule permits only an eight-hour workday. What criteria should an employer use for the extended workday? What criteria should an employer use regarding part-time workers? The caution zone jobs did not indicate an employee time frame beyond the workday duties. That proposed rule considers a worker to be at risk of a worker-related musculoskeletal disorder based on exceeding the caution zone job criteria. One work day? A work week? Or a work month?

Section 051420 discusses employee involvement. PacificCorp has always involved employees in the development of safety and health programs within the scope and nature of their jobs. We are concerned, however, that given the technical level requiring the employee to accurately assess

caution zone jobs in -- in order to reduce work-related musculoskeletal disorder hazards. This would extend beyond the scope of employee involvement.

We are concerned that the cost to train employees to make ergonomic assessments and recommendations in numerous locations within Washington state would be cost prohibitive and not feasible. We are not opposed to discussing the findings of hazards -- and control measures with employees and developing our ergonomic programs; however, we do oppose employees being involved in the areas that are beyond their level of expertise. Those same employees are not involved in developing operating budgets.

We are concerned that employees may want to purchase --

THE REPORTER: You have got to slow down.

MR. LOOMIS: -- control of the work-related musculoskeletal disorder without regard to cost of purchasing -- PacificCorp is concerned with the cost of -- that have not been shown to reduce work-related musculoskeletal disease to determine if they are technically and economically

feasible to achieve.

We all recommend that L & I consider offering a technical assistance program to employers and employees who require assistance in meeting the requirements of this rule. Given the depth and width of this proposed rule and the --

Thank you for your time in listening to our to concerns to the proposed ergonomics rule.

MR. WALTERS: Thank you, sir.

Mr. Mathews.

MR. MEHRENS: William Mehrens, M-e-h-r-e-n-s. I'm executive secretary of the Columbia Pacific Building and Construction Trades Council. I represent about 16,000 construction workers working for about 2,500 employers in the Northwest and others in Southwest Washington. I'm not going to take a lot of time.

Most of the people that testified earlier on the proposal you're working on with others are our members. Even Hoffman, a minute ago, said that they have implemented a lot of the programs that they put together for ergonomic education and training and identification in their project, and it has been successful.

I guess they just don't want the State

telling them that they need to do it, but I think maybe there aren't as many employers out there that are as progressive as Hoffman might be, and they need to be told to take that action.

The concerns about the cost of off-shore movement was seen in the statement provided earlier. That is about a half a billion dollars in costs involved in fifty-thousand plus workers that suffer from injuries each year. Of that billion dollars, the cost should be coming down if you put a good ergonomics program together within the State and make us more competitive.

The three -- the one thing in there that I noticed that kind of bothered me a little bit, is the three to six years to come into compliance, and out of everyone that was up here, including myself, we haven't really talked -- with one exception of the earlier gentleman that went through the pain of carpal tunnel surgery, and the problems out there. And if you go to three to six years, you're talking about a hundred and fifty to three hundred thousand more people that are going to be injured by injuries that could be or should be, the majority, prevented under this -- this rule. Those people have faces and names like that individual.

I would like to find a better way -- and I think you hear that from the employers a lot, a better way to take care of the issue. It's prevention through this ergonomics rule. We can work on prevention so that that we don't have to listen to testimony like that we heard earlier about the gentleman that basically lost his livelihood at work.

I would like to be able to negotiate the rule the way I want to see it, and I know a number of people -- business, and labor, and medical professionals have negotiated the rule to the point it is right now. I think there is another option out there. And rather than talk about the Super Sonics and leave with a grin, we could also negotiate two days a week for work and five days to rest up. That might help us.

MR. WALTERS: Thank you.

Mr. Miller.

MR. MILLER: My name is Gerald, G-e-r-a-l-d, Miller. I represent the vice president of Goldendale Aluminum Company. I would, first of all, like to commend the director of your department for the prevention-based approach that the Department is taking in these rules as contrasted

with the injury-based approach of OSHA.

I also would like to specifically, today, talk just about one issue, and then, I plan to submit more extensive written comments. But, today, I also wish to address and commend, also, the Department for the employee -- what I would call the employee-involvement aspect of the proposed rule and make a suggestion with regard to that.

Our company, for over twelve years, has adopted what I believe to be the most sophisticated and consistent and persuasive employee involvement program of any employer in the state of Washington, and we, having been an employee-owned company, have a lot of different interests that are supported and motivates that employee involvement. We have employees at our -- 725 employees at our facility up in Goldendale involved in any and every aspect of the company's management and operations, and it is primarily instigated by employees who developed a task force on safety and on efficiency and productivity, and so, I believe this is a very, very positive element to bring into it.

However, a couple of cautions or suggestions in regard to this, again, referencing our own company's employee involvement program. One of the

fundamental criterion in our successful employee involvement program and operations and safety is that the task force that proposes to management the change of any program or any process, for any reason, that team -- that task force must have established, by research and other demonstration, appropriate -- that what they think the proposal is going to do will, in fact, do it. And I think what I'm driving toward is what the -- the gentleman from PacificCorp indicated, that the pilot-program approach to these types of rules would go a long way toward ensuring the workers, as well as business, have some reasonable degree of confidence that if we do X, Y or Z, there will be the jointly desired result of succeeding, reducing, and to a large extent eliminating the exposure to these kinds of injuries.

Just a couple of examples that I think, generally, we know about in the state of Washington or even nationally, a few years ago there was the human cry for back braces and look what has happened. There are even those segments of our national society that say back braces increase different kinds of injuries than they have resolved or eliminated.

It is my understanding, as another example, that, in the state of Washington, a fairly large major grocery store chain spent millions of dollars implementing an ergonomic program at their check-out registers, only to find out, years later, that it did not have the result that they had hoped. And I use that as an example, not critically, but as a suggestion that we ought to come up with some way of knowing or having a reasonable idea that success will be the outcome of what we know a lot of time and a lot of money is going to go in to.

Probably one final note on my understanding on the economic impact study, that it has not been conducted or completed, and it seems a little bit backward, to me, that these rules would be implemented before a more comprehensive and complete economic impact study is done.

Thank you.

MR. WALTERS: Thank you.

Is there anyone else who would like to testify?

(No response.)

MR. WALTERS: Even though you haven't signed up, you can sign up after you testify.

(No response.)

MR. WALTERS: Okay. Well, I would just like to remind you that the deadline for comments is February 14 by 5:00 p.m. I want to thank you -- all of you for coming and for testifying, and the hearing is now adjourned at 2:52 p.m.

(Hearing proceedings concluded at 2:52 p.m. on the 11th day of January, 2000.)

C E R T I F I C A T E

I, Dee Casey, RPR, CSR, and a Notary Public of the State of Washington, do hereby certify that the aforementioned proceedings were held before me and that the foregoing 51 pages is a true, correct, and full transcript of the proceedings had to the best of my ability.

I further certify that I am neither related to nor associated with any party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Vancouver, Washington this ____ day of _____, 2000.

Dolores Casey, RPR, CSR

My Washington notary commission expires 9/15/03.

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